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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILLS, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICI CURIAE OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF THE PETITIONER

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INTEREST OF THE AMICI CURIAE

The American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-For-Profit Corporation Act of the State of Illinois. It has its principal of-

* The written consents of the parties to the filing of this brief have been filed with the Clerk.

fices in Park Ridge, Illinois. AFBF was founded to protect, promote and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in 50 states and Puerto Rico (including the Florida Farm Bureau Federation), representing more than three and one-half million member families. AFBF farmer and rancher members produce virtually every kind of agricultural commodity produced in the United States. As was noted repeatedly in the legislative history, AFBF played an important role in the drafting of and negotiations over the Migrant and Seasonal Agricultural Workers Protection Act. It was one of the parties to the consensus that led to this important law. See, e.g., 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Robert B. Collyer); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn). The AFBF thus has both a vital interest in seeing that the Act is properly interpreted and a valuable insight into the meaning and intent of the Act.

The Florida Farm Bureau Federation (FFBF) is a non-profit cooperative membership association organized under the laws of the State of Florida. It has its principal offices in Gainesville, Florida. FFBF's purpose is to apply joint and collective efforts to more effectively promote, protect and represent the economic, social and educational interests of farmers and ranchers in the State of Florida. FFBF is comprised of 62 county Farm Bureau organizations with a total membership of more than 70,000 member families in the State of Florida.

The Florida Citrus Mutual (FCM) is a voluntary non-profit cooperative association organized under the laws of the State of Florida. It has its principal offices in Lakeland, Florida. FCM's purpose is to promote, protect and

represent the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida.

The Florida Fruit and Vegetable Association (FFVA) is a non-profit member cooperative organized under the laws of the State of Florida. It has its principal offices in Orlando, Florida. FFVA's purpose is to direct industry policies and protect property interests of member fruit and vegetable growers and operators in the State of Florida.

The National Council of Agricultural Employers (NCAE) is a non-profit membership association organized in 1964 under the laws of the District of Columbia. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. NCAE members in 35 states hire about 75 percent of the U.S. agricultural work force. NCAE participated with AFBF in the development of the Migrant and Seasonal Agricultural Worker Protection Act. See 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer). NCAE members are thus highly concerned with the proper interpretation and implementation of the Act.

The American Farm Bureau Federation, the Florida Farm Bureau Federation, the Florida Citrus Mutual, the Florida Fruit and Vegetable Association and the National Council of Agricultural Employers have a direct interest in the outcome of this case. The court of appeals' ruling that the Act pre-empts the exclusive remedy provisions of workers' compensation laws is contrary to the interest of AFBF, FFBF, FCM, FFVA, NCAE and their members who employ migrant and seasonal laborers in their agricultural operations.

STATEMENT

This case presents the question of whether § 1854 of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1854, provides a separate remedy for workplace injuries sustained by migrant and seasonal workers who are covered by state workers' compensation laws and thus pre-empts the exclusive remedy provisions of such state laws. A regulation promulgated by the Department of Labor at the time AWPA was enacted provided that state workers' compensation is the exclusive remedy for injuries sustained by covered employees, but the court of appeals rejected that interpretation.

1. AWPA regulates activities of farm labor contractors and employers and "assure[s] necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." 29 U.S.C. § 1801. The Act's primary concern is with wage payment, record-keeping, safety standards and financial accountability. It protects agricultural workers by requiring employers and contractors to disclose relevant information and maintain records,[1] to pay wages promptly and in full,[2] to refrain from requiring workers to buy goods or services solely from them,[3] to abide by the terms of their contracts with workers,[4] to provide safe and sanitary housing,[5] and to provide safe, insured transportation for workers.[6]

[1] 29 U.S.C. §§ 1821, 1831.
[2] 29 U.S.C. §§ 1822(a), 1832(a).
[3] 29 U.S.C. §§ 1822(b), 1832(b).
[4] 29 U.S.C. §§ 1822(c), 1832(c).
[5] 29 U.S.C. § 1823.
[6] 29 U.S.C. § 1841.

Section 1841 of AWPA deals with the safety of motor vehicles used to transport migrant and seasonal workers. It requires that such vehicles conform to federal and state safety standards and that vehicle operators carry insurance or post a bond "against liability for damage to persons or property * * *." 29 U.S.C. § 1841(b)(1)(C). Subsection (c) provides that "[i]f an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death * * * [n]o insurance policy or liability bond shall be required * * * if such workers are transported only under circumstances for which there is coverage under such State law." 29 U.S.C. § 1841(c).

The Act is enforced in several different ways. Section 1851 authorizes criminal prosecution of those who willfully or knowingly violate AWPA. In addition, the Secretary of Labor is authorized to bring civil actions in court seeking injunctive relief (29 U.S.C. § 1852) and to assess civil fines in administrative proceedings (29 U.S.C. § 1853). Finally—and most importantly for this case—Section 1854 authorizes any person aggrieved by a violation of AWPA to file suit for equitable relief, actual damages or statutory damages of $500 per plaintiff per violation.

2. AWPA went into effect on April 14, 1983. Two days before then, the Secretary of Labor, as required by § 1841(d), issued interim regulations interpreting and carrying out the provisions of AWPA. 48 Fed. Reg. 15,800. Among those initial, contemporaneous regulations was one providing that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the ex-

clusive remedy for loss under this Act in the case of bodily injury or death." 48 Fed. Reg. 15,819.[7]

3. Respondents, ten farm workers employed by petitioner, sued under § 1854 claiming that they had been injured in a motor vehicle accident while being transported to work in an allegedly unsafe van owned by petitioner. They sought damages for their injuries even though they had already applied for and received workers' compensation benefits. Florida law provides that "[t]he liability of an employer [under the workers' compensation law] shall be exclusive and in place of all other liability of such employer to * * * the employee * * *." Fla. Stat. § 440.11(1). The United States District Court for the Middle District of Florida granted petitioner's motion for partial summary judgment on the ground that the Florida workers' compensation statute provided respondents' exclusive remedy. Pet. App. 19a. The United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 15a.

4. As a threshold matter, the court of appeals declined to afford any deference at all to the Secretary of Labor's regulation providing that workers' compensation is the exclusive remedy for covered employees. The court, citing this Court's decision in *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-448 (1987), held that because the case involved a "question[ ] of statutory construction * * * the deference with which we would ordinarily treat administrative regulations is not appropriate." Pet. App. 5a.

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[7] Permanent regulations, including the exclusive remedy provision without modification, were issued on August 12, 1983. 48 Fed. Reg. 36,736. There was apparently no objection to that provision, which is now codified at 29 C.F.R. § 500.122(b).

Having found no need to defer to the Department of Labor, the court undertook its own, independent examination of the statute, its purposes and its history to determine whether it pre-empted the exclusive remedy provision of state workers' compensation laws. The court acknowledged that AWPA did not expressly deal with the issue. Nor did Congress express an intent to occupy the regulatory field. In fact, as the court noted, AWPA expressly provides that it "is intended to supplement State law, and [does] not excuse any person from compliance with appropriate State law and regulation." Pet. App. 4a (quoting 29 U.S.C. § 1871). The court therefore considered the case under the branch of pre-emption doctrine that asks whether "the state law stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " Pet. App. 4a (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

Contrary to the holding of the Fourth Circuit in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116, cert. denied, 108 S. Ct. 163 (1987), the court of appeals held that the provision for a private right of action was central to the Act's enforcement and would be frustrated if effect were given to state workers' compensation laws. Pet. App. 10a-12a. The court distinguished this Court's holding in *United States* v. *Demko*, 385 U.S. 149, 152 (1966), that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Demko*, the court of appeals reasoned, involved two federal statutes (rather than one federal and one state law), and the legislative history of AWPA, in the court of appeals' view, implied that "Congress intended to provide heightened protection for migrant and seasonal agricultural workers."

Pet. App. 13a. In addition, the court of appeals reasoned that AWPA intended to provide workers with full recovery for their actual damages. Florida workers' compensation law allows for recovery of only two-thirds of back wages. Pet. App. 14a.

In concluding that the 1982 Act pre-empted state law, the court placed considerable reliance on an effort in 1978 to amend the Act's predecessor, the Farm Labor Contractor Registration Act ("FLCRA"), which was repealed by AWPA. The unsuccessful amendment to FLCRA would have given effect to the exclusive remedy provisions of state workers' compensation laws. Pet. App. 7a-8a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although cast in terms of pre-emption, this case is really about statutory construction and deference to administrative agency interpretation. The motor vehicle safety and insurance provisions of AWPA expressly acknowledge the role of state workers' compensation laws and exempt employers from the vehicle insurance requirements if their "workers are transported only under circumstances for which there is coverage under such State [workers' compensation] law." 29 U.S.C. § 1841(c). The Department of Labor—the most important player in the "consensus" that drafted AWPA—published regulations before the effective date of the statute providing that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the exclusive remedy for * * *

bodily injury or death." 29 C.F.R. § 500.122(b). The regulation went into effect without objection. Now, some six years later, the court of appeals, *affording absolutely no deference to the Department of Labor and relying on the legislative history of the wrong statute*, has decided that congressional intent precludes the Secretary of Labor's interpretation.

The court of appeals' interpretation—which is directly contrary to that of the only other court of appeals to consider the issue—is itself contrary to congressional intent. It disregards the consensus nature of AWPA and the even-handed approach of the statute. It subjects farm employers who supported the bill to completely unanticipated liability—liability for which virtually every other employer in the United States is covered by workers' compensation insurance. And it completely ignores the eminently reasonable, contemporaneous interpretation of the administrative agency that drafted the statute, shepherded it through Congress, and is charged by Congress with implementing and carrying out the law. This Court should reverse the court of appeals to preserve the integrity of the administrative process and to reinstate the reasonable interpretation of AWPA that made the consensus possible.

ARGUMENT

I. The Court Of Appeals' Decision Violates Fundamental Principles Of Administrative Law And Improperly Encroaches On The Authority Of The Department Of Labor.

1. AWPA was enacted in 1982 as a consensus bill, with the support and cooperation of the Reagan administration, both parties in Congress, organized labor, migrant farm worker groups, and representatives of agricultural employers including the American Farm Bureau Federation and the National Council of Agricultural Employers. As Robert B. Collyer, Deputy Undersecretary of Labor, testified in support of the bill:

> This cooperative effort has now resulted in a consensus bill, endorsed by the AFL-CIO, the Migrant Legal Action Program and by major agricultural employer organizations, such as the American Farm Bureau Federation * * * and the National Council of Agricultural Employers.

128 Cong. Rec. 32,464. See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn).

The Act superseded entirely the Farm Labor Contractor Registration Act of 1963 ("FLCRA"). That statute had proven ineffective to protect workers and excessively burdensome on employers. AWPA was designed to improve the protection of workers while at the same time eliminating unnecessary administrative burdens and clarifying the responsibilities of employers. As the Department of Labor representative put it:

> The Administration's bill was developed because of concerns raised about FLCRA in the Congress and in the agricultural community among both employer and worker groups. In response to these concerns, we entered upon a cooperative effort to replace FLCRA with a new law better designed to provide needed protections for farmworkers and, at the same time, eliminate unnecessary regulatory requirements that FLCRA has placed on agricultural employers.

128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer). See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,466 (statement of Senator Byrd); 128 Cong. Rec. 26,009 (statement of Representative Erlenborn); 128 Cong. Rec. 26,009 (statement of Representative Panetta).

FLCRA was aimed at correcting some of the problems that occurred when agricultural workers were supplied to farmers by labor contractors (commonly called "crew leaders") who moved with the harvest and supplied labor to several farmers at a time.

> FLCRA was enacted in 1964, following considerable media attention about the conditions of migrant agricultural workers. That concern was centered on crewleaders, who are the middlemen between agricultural workers and farm operators. In this capacity, crewleaders often transport agricultural workers to jobsites; they may also have some supervisory responsibility for these workers in the fields; they may act as a paymaster for the workers or furnish and maintain farmworker housing, collect rent or occasionally supply meals.
>
> Evidence was developed at the time of the original congressional hearings that crewleaders did not always provide these services to farm operators or to farmworkers in an honest way. The original Act was designed, therefore, to prevent exploitation by crew-

> leaders engaged in interstate activities and to improve working conditions of migrant farmworkers who were employed by crewleaders. The Act required all farm labor contractors covered by its provisions to register with the U.S. Department of Labor and to observe certain requirements in dealing with farmworkers and farm operators.

128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).[8] Among the many abuses committed by some labor contractors was transporting workers to farm worksites in unsafe, uninsured vehicles.[9] Because crew leaders often carried neither motor vehicle liability insurance nor workers' compensation coverage, those who were injured in unsafe labor contractor vehicles were often left uncompensated. One of the reforms attempted by FLCRA was to require crew leaders to carry insurance to compensate the workers for any injuries they received during transport.[10]

FLCRA was not a success. In 1974, Congress investigated the problems of migrant workers again and found that FLCRA had not accomplished its objective. The statute was amended to expand its coverage. But the 1974 amendment had the unintended consequence of requiring large numbers of fixed-situs agricultural employers to register as farm contractors and to comply with burdensome regulations inappropriate for their operations. The

[8] See 128 Cong. Rec. 26,010 (statement of Representative Panetta); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn); 128 Cong. Rec. 32,459 (statement of Senator Hatch).

[9] See 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).

[10] See Sen. Rep. No. 202, 88th Cong., 2d Sess. (1964), *reprinted in* 1964 U.S. CODE CONG. & AD. NEWS 3695.

amendment "resulted in great numbers of [fixed-situs] employers being treated as if they were crewleaders with no fixed addresses or financial integrity." 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).[11] By 1982, it appeared to all concerned that FLCRA had imposed "unnecessary regulatory requirements" on fixed-situs agricultural employers and had failed "to provide needed protections for farm workers * * *." *Ibid.*

2. AWPA was intended to provide meaningful protection for agricultural workers while alleviating the harassment of farm employers that occurred under FLCRA and coming to grips with the differences between labor contractors and fixed-situs agricultural employers. The Department of Labor spokesman "emphasize[d] the importance of distinguishing between fixed-situs employers and traditional crewleaders. Nothing under [FLCRA] has caused more bitterness—not to mention more litigation—than the failure to do so." *Ibid.* The Act retains the requirement that labor contractors register with the Department of Labor but makes it clear that this requirement does not apply to fixed-situs employers. 29 U.S.C. §§ 1802(7), 1811. On the other hand, the critical protections afforded to migrant and seasonal agricultural workers—including the requirement of safe, insured transport—apply without regard to whether the workers are employed directly by farm operators or through crew leaders.

By requiring that fixed-situs farm employers (as well as crew leaders) carry liability insurance on the vehicles

[11] See also H. R. Rep. No. 97-885, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 4566 (hereinafter cited as "House Report") at 2-4; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).

in which they transport workers, AWPA greatly increased the possibility of "double coverage." As actual employers, farm operators are much more likely than labor contractors to be covered by (or to be eligible to elect coverage under) state workers' compensation laws.[12] In thirteen states plus the District of Columbia agricultural employers are required to carry workers' compensation coverage on the same terms as other employers.[13] Twenty-two other states require such coverage but include some limitations not applicable to other covered employees.[14] And in the remaining fifteen states, agricultural employers may elect to come under the workers' compensation law.[15] In all states, whether coverage is mandatory or elective, once an employer is covered, workers' compensation becomes the exclusive remedy for employee injuries.[16] For employers covered by workers' compensation, the vehicle liability coverage required by AWPA would cover liability for damages for bodily injuries sustained by employees—liability that is also covered by workers' compensation.

Congress expressly addressed the possibility of such double coverage by exempting employers covered by workers' compensation from the vehicle insurance requirements:

> If an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and

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[12] Fixed-situs agricultural employers are also much easier for states to keep tabs on and to ensure that required workers' compensation coverage is maintained.

[13] See 4 A. Larson, THE LAW OF WORKMEN'S COMPENSATION (1989), App. A, Table 4, pp. 4-1 to 4-5.

[14] *Ibid.*

[15] *Ibid.*

[16] See 2A A. Larson at 12-1.

> such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, * * * [n]o insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

29 U.S.C. § 1841(c)(1). The sponsors of the bill—which was intended to clarify the obligations of farm employers—assured farmers "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.

The statute required the Secretary of Labor to issue regulations to implement the motor vehicle safety and insurance provisions not later than the effective date of the law. 29 U.S.C. § 1841(d).[17] The Secretary, after consulting with the groups involved in the consensus statute, published interim regulations (and requested comments) on April 12, 1983. Among those contemporaneous regulations was one that directly governs this case:

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. § 500.122(b). This regulation became permanent on September 12, 1983, without objection (48 Fed. Reg. 36,736) and has governed the practices of farm employers and insurers ever since.

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[17] See also 29 U.S.C. § 1861 (authorizing the Secretary to "issue such [other] rules and regulations as are necessary to carry out this chapter").

3. In deciding directly contrary to the Department of Labor regulation that state workers' compensation benefits are not the exclusive remedy for bodily injury or death, the court of appeals afforded absolutely no deference to the regulation. The court of appeals explained its position as follows (Pet. App. 5a):

> To determine whether the Florida statute is pre-empted * * * we must ascertain the purposes and objectives of the Act. This involves questions of statutory construction. Thus, the deference with which we would ordinarily treat administrative regulations is not appropriate. See *Immigration and Naturalization Service* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-48 (1987) (" 'The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. . . .' ") (quoting *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)).

The court of appeals' recognized that the legislative history was inconclusive and contained "no debate surrounding [the] language [of § 1841(c)]" (Pet. App. 10a). It also acknowledged that "Congress expressly recognized and left room for state regulations" (Pet. App. 4a), and that it was drawing "inferences" from the overall policy of the statutes. (Pet. App. 13a).[18] Yet it nevertheless concluded

[18] The court found it significant that Congress had not been more explicit on the issue: "Congress was well aware of the possibility of 'double dipping.' *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of * * * the private right of action it would have done so directly." Pet. App. 13a. But the "Hearings" the court cites relate to the 1978 amendments to FLCRA, and not to AWPA at all. And in any event, the court's analysis turns traditional notions of pre-emption on their head by requiring a clear statement that state

(Footnote continued on following page)

that to give effect to the regulation and the exclusive remedy provision of Florida workers' compensation law would create "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Pet. App. 12a (quoting *Hines* v. *Davidowitz*, 312 U.S. at 67). The court thus reached its own, independent conclusion that the policies and purposes of the Act would best be accomplished by not giving effect to the exclusive remedy provisions of state workers' compensation laws; the court totally disregarded the opposite conclusion reached by the administrative agency Congress charged with implementing and carrying out the law.

4. The court of appeals' approach is at odds with basic concepts of administrative law and represents an intolerable encroachment on the authority of the Department of Labor. The court misconstrued *Cardoza-Fonseca* as marking a fundamental change in the test set forth in *Chevron*. Other courts have made the same mistake,[19] but it is one that should have been put to rest by this Court's decision in *NLRB* v. *Food & Commercial Workers*, 484 U.S. 112, 123 (1987). See also *id.* at 134-135 (Justice Scalia, concurring); *Theodus* v. *McLaughlin*, 852 F.2d 1380, 1384 (D.C. Cir. 1988).

[18] *continued*
law is *not* pre-empted, rather than clear evidence of pre-emption. As this Court has emphasized, cases such as this one should "start[ ] with the basic assumption that Congress did not intend to displace state law." *Maryland* v. *Louisiana*, 451 U.S. 725, 746 (1981). See also L. Tribe, AMERICAN CONSTITUTIONAL LAW 479-480, 487-491 (2d ed. 1988).

[19] See, *e.g., Union of Concerned Scientists* v. *NRC*, 824 F.2d 108, 113 (D.C. Cir. 1987); *Adams House Health Care* v. *Heckler*, 817 F.2d 587, 593-594 (9th Cir. 1987), vacated, 108 S. Ct. 1569 (1988); *International Union, UAW* v. *Brock*, 816 F.2d 761, 764-765 (D.C. Cir. 1987).

As this Court recently emphasized (*NLRB* v. *Food & Commercial Workers*, 484 U.S. at 123), the proper approach in a case such as this one is first to determine whether congressional intent is "clear" and "unambiguous" on the "precise question at issue." *Chevron*, 467 U.S. at 843 n.9. If it is, that intent must be given effect. *NLRB* v. *Food & Commercial Workers*, 484 U.S. at 123. "However, where 'the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.' " *Ibid.* (quoting *Chevron*, 467 U.S. at 843). The agency's interpretation of the statute is entitled to deference "as long as its interpretation is rational and consistent with the statute." *Ibid.* The court of appeals did not follow that sensible approach, but instead imposed its own interpretation without considering the reasonableness of the Department of Labor's reading.

In this case, to the extent the statute or the legislative history speaks to "the specific issue," it favors the Department of Labor's approach. Section 1841(c) of AWPA expressly recognizes the role of state workers' compensation law. By exempting employers covered by workers' compensation from the vehicle insurance requirements, § 1841(c) at least implies that compensation for bodily injuries would come through workers' compensation and not through AWPA. The legislative history, by assuring covered employers that they need no additional insurance, firmly supports that implication. House Report at 20. The most that can be said in support of the court of appeals' position is that AWPA is "silent or ambiguous" on the "precise question" of whether state workers' compensation laws will provide the exclusive remedy for bodily injury or death. But in that case, the court of appeals should have afforded substantial deference to the Department of Labor's interpretation. The court's inquiry should

have focused on whether the regulation was "rational and consistent with the statute."

Although the court of appeals may have balanced the policy concerns differently and reached the opposite conclusion on its own, it can hardly be maintained that the Department of Labor's interpretation of AWPA is "[ir]rational and [in]consistent with the statute." To the contrary, as we point out above, the regulation is entirely consistent with the statute. Section 1871 expresses an intention not to supplant state law, and § 1841(c) expressly recognizes the role of state workers' compensation laws and at least implies that claims for bodily injury would be handled through workers' compensation.

To give effect to the clear implication of the statute and the assurances of its sponsors is neither irrational nor inconsistent with AWPA. Instead, it is a reasonable interpretation of the law well within the authority and discretion of the Secretary of Labor. As such, it was entitled to deference.

II. Congress Did Not Intend To Supplant The Exclusive Remedy Provisions Of State Workers' Compensation Laws.

As we demonstrate above, the Secretary of Labor's regulation is rational and consistent with the statute. It is thus entitled to deference. But even if it were *not* entitled to deference, the Department of Labor's interpretation should be upheld as best effectuating the intent of Congress. There is no support in the statute for the startling claim that Congress intended to disturb the historical compromise reflected in state workers' compensation laws. It makes no sense to allow employees covered by AWPA to sue for damages caused by bodily injury

when they are covered by workers' compensation for those same injuries. Virtually all other employees in the United States are limited to their workers' compensation remedies; there is no evidence that Congress wanted to give agricultural workers rights in excess of those other employees.

In light of the statutory language, the legislative history and the Secretary of Labor's regulations, it is hardly surprising that the only court of appeals previously to decide the issue held "that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law [that] provides that it is the exclusive remedy, * * * the worker is bound by that provision." *Roman* v. *Sunny Slope Farms, Inc.*, Pet. App. at 29a. That case did *not* involve a motor vehicle injury and thus was not directly governed by the regulation or by § 1841. Yet the Fourth Circuit held that AWPA did not pre-empt the exclusive remedy provision of state law and affirmed the dismissal of the suit.

In *Roman*, the court of appeals noted that § 1871 expressed Congress's intention to supplement, rather than supplant, state law. Pet. App. 25a. It also relied on the fact that § 1841—which was not directly involved in that case but is in this case—exempted employers covered by state workers' compensation laws from the motor vehicle insurance law:

> In addition to demonstrating that Congress did not intend to pre-empt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

Pet. App. 26a. This Court denied certiorari, 108 S. Ct. 163.

As the Fourth Circuit pointed out, a holding that AWPA pre-empts state workers' compensation law would conflict with the approach taken by this Court in *United States* v. *Demko*, 385 U.S. 149 (1966) and *Johansen* v. *United States*, 343 U.S. 427 (1952). In *Demko*, a federal inmate employed in a prison industry was injured on the job and received compensation benefits under a special federal compensation statute, 18 U.S.C. § 4126. He then attempted to sue the government under the Federal Tort Claims Act. This Court considered the federal compensation statute to be the equivalent of a workers' compensation law and held that it provided the plaintiff's exclusive remedy:

> [T]he right of recovery granted groups of workers covered by such compensation laws is exclusive. * * * [W]here "the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." * * * [W]here there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.

Id. at 151-152 (quoting *Johansen* v. *United States*, 343 U.S. 427, 441 (1952). See also *Patterson* v. *United States*, 359 U.S. 495 (1959).

The Fourth Circuit—in a case not governed by the regulation and not requiring deference to the Department of Labor's regulation—thus held that Congress did not intend for AWPA to supplant the exclusive remedy provisions of state workers' compensation laws. That sensible reading of congressional intent—supported by the language of § 1841(c) and § 1871, the legislative history and the consensus nature of AWPA, and this Court's analysis in *Demko*—should be followed in this case. Surely a finding that Congress intended to pre-empt such a traditional,

longstanding state rule should not be lightly made and should require stronger legislative history evidence than that afforded by the court of appeals, if not a clear statement in the statute itself.

The best legislative history evidence the court could come up with did not pertain to AWPA at all but instead related to FLCRA—the statute repealed by AWPA. The court placed particular emphasis on the fact that in 1978 an amendment to FLCRA was proposed that would have explicitly recognized that state workers' compensation benefits were the exclusive remedy for bodily injuries to covered employees. Pet. App. 7a-8a. But that history relates to FLCRA, not AWPA, and FLCRA was a very different law. It regulated farm labor contractors, not fixed-situs farmers, and it was the nature of the labor contractor business and the likelihood the crew leaders would not carry workers' compensation coverage that led the Department of Labor to oppose and Congress to reject the 1978 amendment.[20]

The remaining reasons given by the court of appeals for rejecting the Fourth Circuit's approach are equally unpersuasive. The court's notion that if workers' compensation formed the exclusive remedy for workers' injuries employers "would have little incentive to comply with the transportation safety requirements set out in AWPA and its regulations" (Pet. App. 12a) is misguided. First of all, workers' compensation insurance premiums reflect the injury experience of an employer's workers; if an employer disregards safety requirements, it will suffer direct financial consequences.[21] Moreover, the regulation merely provides that workers' compensation benefits shall be the exclusive remedy for losses due to bodily injury or death; it does not preclude a private action under AWPA to enjoin safety violations or to recover other losses. The Act also provides for civil fines to be imposed by the Department of Labor (29 U.S.C. § 1853) and—in cases of willful or knowing violations—even the possibility of criminal prosecution (29 U.S.C. § 1851). In these circumstances, to say that employers covered by workers' compensation would have little incentive to comply with AWPA is to ignore reality.

In addition, although the court of appeals was certainly correct in stating that AWPA was intended to allow workers to recover their losses, there is absolutely no evidence that Congress intended to allow double recovery, once through workers' compensation and a second time through AWPA. The court's reasoning that a workers' compensation award undercompensates injured workers is precisely the argument this Court rejected in *United States* v. *Demko*, 385 U.S. at 152-153, and ignores the fact that workers' compensation benefits (unlike wages) are not taxed (I.R.C. § 104(a)(1)) and that no deduction is made for the fault of the employees or of third parties.[22]

The court of appeals' reading of congressional intent should be rejected. It relies on the wrong legislative history, is based on mistaken assumptions about the nature

[20] See *Hearings Before the Subcommittee on Economic Opportunity of the Committee on Education and Labor on H.R. 8232 [and other bills] to Amend [FLCRA]*, 95th Cong., 2d Sess., at 8, 56-57 (1978) (statement of Assistant Secretary Donald Elisburg).

[21] 1 A. Larson, at 14 & n.18.

[22] In this case, the employer claimed that respondents were contributorily negligent and several of the respondents also sought and obtained very substantial relief against a third party (the manufacturer of the van's tires). See *Etheridge* v. *Dunlop North America, Inc.*, No. 86-351-CIV-T-(B) (M.D. Fla. 1986).

of AWPA and workers' compensation, and in reality rests not on congressional intent at all but on a policy judgment best left to the Department of Labor.

III. AWPA Should Not Be Construed To Disturb The Role Of State Workers' Compensation Laws.

Agricultural employers in all 50 states and the District of Columbia either are required to maintain workers' compensation coverage (35 states and D.C.) or may elect to do so (15 states).[23] In all of the states, once an employee is covered, the remedies provided by workers' compensation are exclusive. Relying on the language of § 1841 and the regulations issued by the Secretary of Labor, agricultural employers throughout the nation have assumed that their workers' compensation insurance completely covers them for any liability for on-the-job injuries, just as it does for nonagricultural employers. Particularly with regard to liability for employees injured in vehicle accidents, before now there seemed absolutely no reason to obtain additional insurance.[24] In fact, Congress told farmers that "no additional insurance for damages to persons need be obtained." House Report at 20. The court of appeals' decision has made that congressional assurance meaningless and is contrary to the long held view that state workers' compensation statutes are a satisfactory method to compensate individuals for workplace injuries.

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[23] See 4 A. Larson, App. A, Table 4, p. 4-1.

[24] *Amici* have consulted with insurance industry representatives and have learned that in Florida and other states insurance is not available to cover the unanticipated risk imposed by the court of appeals' decision. An uninsured six or seven figure liability judgment would be enough to bankrupt many farmers.

Unfortunately, agriculture can be a hazardous occupation. The National Safety Council reported that in 1987 agricultural workers suffered 160,000 workplace injuries and 1,600 deaths. National Safety Council, ACCIDENT FACTS 97 (1988 ed.). A significant percentage of agricultural injuries resulted from motor vehicle accidents such as the one involved in this case.[25] The states have developed a satisfactory means for handling farm injuries—through workers' compensation laws. Farm employers should be encouraged to carry workers' compensation coverage even in those states where it is not mandatory, but the court of appeals' decision—by depriving farmers of one of the primary benefits of such coverage—gives them the opposite incentive.[26] The decision also places agricultural employers (who must obtain additional insurance in excess of workers' compensation coverage) at a competitive disadvantage with employers in all other industries. Employers in other industries are completely protected by workers' compensation insurance. There is absolutely no evidence that Congress intended this inequity, and this Court should not permit it to continue.

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[25] See Payton, *Farm Injuries*, 15 EMERGENCY MEDICAL SERVICES 28 (1986).

[26] It may also give states a powerful incentive *not* to require agricultural employers to carry workers' compensation coverage. That is surely not something Congress intended.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded with instructions to dismiss respondents' AWPA claims for bodily injuries or death.

Respectfully submitted,

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